House Bill 5558

The Michigan Consumer Protection Act allows an individual insured to seek recompense from his or her own insurance company for conduct occurring prior to March 28, 2001 that is unlawful under Chapter 20 of the Insurance Code (Chapter 20 is the Uniform Trade Practices Act). The insured may seek full damages, including economic, noneconomic, and exemplary in appropriate cases, or a statutory damage of $250 per violation, plus attorney fees. Contrary to the insurance industry's representations, other industries are subject to individual suits for violations of the banking code, the public service commission act, the motor carrier act, the savings bank act, and the credit union act. MCL §445.604(2). The insurance industry currently has more protection than these other industries.

The limited window under the MCPA for redress of violations of Chapter 20 of the Insurance Code is as a practical matter available (due to the MCPA's statute of limitations) only to individuals catastrophically injured in automobile accidents prior to March 28, 2001 (people suffering from quadriplegia, paraplegia, closed head injuries) who require a lifetime of care (and thus a lifetime of benefits from automobile insurers).

The insurance industry asserted that HB 5558 would have no effect on the remedies available to catastrophically injured individuals for insurance companies' violations of Chapter 20 of the Insurance Code. Chapter 20, and MCL §500.2026 in particular, contain standards of conduct developed by the insurance industry itself. Currently, other

than the MCPA claim, individuals catastrophically injured in automobile accidents have no ability to obtain recompense for violations of the UTPA standards, in particular MCL §500.2026. The courts have consistently held that there is no private right of action under the UTPA. *See Crossley v Allstate Ins Co,* 155 Mich App 694 (1987); *Isagholian v Transamerica Ins Co,* 208 Mich App 9 (1995)(dismissing bad faith claim based on violations of UTPA); *Young v Michigan Mut Ins Co,* 139 Mich. App. 600 (1985); *see also Safie Enterprises, Inc v Nationwide Mut Fire Ins Co,* 146 Mich App 483 (1986)(no claim for violation of UTPA anti-discrimination provisions).

The ability of the insurance commissioner to take regulatory action does not provide individuals with the remedies available to them under the MCPA (one would have to question the ability of the Commissioner to bring current enforcement actions for conduct prior to March 28, 2001 in any event). The enforcement mechanisms under Chapter 20 available to the Insurance Commissioner include injunctive type relief, extremely modest penalties, and licensing actions. *See, e.g.,* MCL §500.2038; MCL §500.2043. Nothing allows an individual (even if allowed to intervene) to obtain policy benefits or their equivalent or any other damages suffered by the individual as a result of the insurance company's unlawful conduct. MCL §500.2038(1)(c) does allow for a "refund of overcharges," but contrary to the insurance industry's assertion, the plain language only applies where the insurers charged too much, not where an insurer engaged in violations of MCL §500.2026 and deprived an insured of benefits and caused other damage. Furthermore, in *Young, supra,* the Court held that an insured is not able to recover any of the penalties available under Chapter 20.

The insurance industry repeatedly claimed that catastrophically injured individuals have the ability to bring bad faith claims under Chapter 20. This is inaccurate. MCL §500.2006(4) allows first party claimants (first party refers to insureds versus their own insurance companies) to recover penalty interest under certain circumstances for untimely payments only (and does not mention "bad faith" as to first party claimants). It does not allow for any remedy for violations of MCL §500.2026 and does not allow the full range of actual damages as under the MCPA. Furthermore, this provision is inapplicable to the catastrophically injured individuals at issue here because the No Fault Act itself contains a penalty interest provision that applies to first party claimants injured in automobile accidents. MCL §500.3142. Of course, the availability of penalty interest to those injured in automobile accidents may be limited by the one year back rule of MCL §500.3145(1) and thus provide no remedy for pre-March 28, 2001 conduct absent the MCPA claim.

MCL §500.2006(4) does refer to "bad faith," but only as to "third party tort claimants" and only if the third party tort claimant proves the insurer acted in "bad faith" (an undefined term) in a court of law. That provision is inapplicable to the matters addressed by HB 5558.